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## GEE BOON KEE & ORS v. TAN POK SHYONG

FEDERAL COURT, PUTRAJAYA
ZULKEFLI AHMAD MAKINUDIN PCA
SURIYADI HALIM OMAR FCJ
HASAN LAH FCJ
B
ZAINUN ALI FCJ
AZIAH ALI FCJ
[CIVIL APPEAL NO: 02(f)-34-04-2017(W)]
6 NOVEMBER 2017

C ***CIVIL PROCEDURE:*** *Judgments and orders – Contract – Sale and purchase of land – Decree of specific performance – Incidental order allowing appellants to apply for additional orders – Effect on contract – Whether contract remained in force – Whether did not merge into decree – Application for transfer of land pursuant to incidental order – Whether effectively an application to have carriage of decree of* D *specific performance to completion – Whether not vitiated by limitation – Limitation Act 1953, s. 6(3) – Applicability*

***LIMITATION:*** *Contract – Sale and purchase of land – Decree of specific performance – Incidental order – Application to have carriage of decree pursuant to incidental order – Whether a 'fresh action' – Whether barred by limitation –* E *Limitation Act 1953, ss. 2, 6(3)*

***LAND LAW:*** *Transfer – Sale and purchase of land – Beneficial ownership – Failure by purchaser to register as owner of land – Specific performance – Decree of specific performance obtained – Decree followed by incidental order allowing* F *purchaser to apply for additional orders – Application for transfer pursuant to incidental order – Whether only an application to have carriage of decree of specific performance to completion – Whether not vitiated by limitation – Whether appropriate for court to exercise inherent power to order transfer*

***WORDS & PHRASES:*** *'action' – Section 2(1) Limitation Act 1953 – Whether* G *referring to a fresh action*

The appellants had purchased two pieces of land in 1973 ('lots 512 and 513'), but for some reasons had not registered themselves as the owners thereof. In 1986, the appellants took out an originating summons and sought a declaration that the seller ('TAT') was a trustee of the said lands, and for H specific performance of the relevant sale contract. By an order dated 25 March 2000, the High Court granted specific performance of the contract ('the 2000 order'). TAT appealed but the appeal was dismissed. The facts showed however that, having dismissed the appeal, the Court of Appeal had on 25 October 2005 made an ancillary order allowing the appellants to apply I to the High Court for 'perintah-perintah tambahan berkenaan dengan pelaksanaan spesifik'. Be that as it may, on TAT's demise in 2011, the respondent became the legal representative of TAT's estate. In the meanwhile, on 13 March 2014, lot 512, which had been charged by TAT

to RHB Bank, was auctioned off by the latter, and following that, the appellants caveated lot 513. The respondent objected to the caveat, but nothing turned on that. Then, on 7 October 2015, the appellants filed encl. 292 herein applying, *inter alia*, for an order that the respondent transfer to them lot 513. The High Court allowed the application. It was the view of the learned Judicial Commissioner ('JC'), in allowing the application, that he had inherent power to grant the orders sought and to order a relief that differed from the 2000 order, and that, the fact that specific performance was granted in the 2000 order meant that the respondent was a trustee of the land, which in turn meant that s. 22(1) of the Limitation Act 1953 ('the Limitation Act') applied and would bar the application from being vitiated by limitation. On appeal, the Court of Appeal, by a decision dated 11 October 2016, however, disturbed the findings of the JC. It was ruled that the 2000 order only granted specific performance but not the prayer to declare TAT a trustee, that the JC was wrong in invoking the court's inherent jurisdiction to grant a relief that differed from the terms of the 2000 order, and further that, on the authorities of *Daud v. Ibrahim* and *Seema Development Sdn Bhd v. Mah Kim Chye*, encl. 292 was 'an action' and 'a proceeding in a court of law', and therefore barred by limitation by virtue of s. 6(3) of the Limitation Act.

The appellants sought leave to appeal to the Federal Court, arguing that the decision of the Court of Appeal on 11 October 2016 was contrary to settled law. The Federal Court, in granting leave, allowed three questions of law to be ventilated before it, namely: (i) whether, having regard to *Johnson and Another v. Agnew*, limitation applied to bar an application to have carriage of a decree of specific performance; (ii) whether, bearing in mind *Lowsley and Another v. Forbes* and *United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin*, an application to have carriage of a decree of specific performance to completion was an action upon a judgment within s. 6(3) of the Limitation Act; and (iii) whether the decision in *Daud v. Ibrahim* applied to an application to have carriage of a decree of specific performance to completion.

**Held (allowing appeal; setting aside order of Court of Appeal; reinstating order of High Court *albeit* for different reasons)**
**Per Hasan Lah FCJ delivering the judgment of the court:**

**(1)** This was an appropriate case for the court to exercise its inherent power to order for lot 513 to be transferred to the appellants. (para 61)

**(2)** The courts below failed to take into account the incidental order made by the Court of Appeal on 25 October 2005 which gave the appellants the liberty to make an application for additional orders in respect of the order for specific performance. By virtue of the incidental order, the court is given wide powers to order any form of relief in accordance with the equitable principles. (para 60)

**(3)** The law is clear that when an order for specific performance is made, the contract remains in effect and is not merged in the judgment for specific performance, and a court of equity or one exercising equity jurisdiction, maintains full control of the matter. This proposition of law was accepted by the House of Lords in *Johnson and Another v. Agnew*. (para 38)

**(4)** In *Lowsley and Another v. Forbes*, the word 'action' was held to mean a fresh action but did not include proceedings by way of execution. *Lowsley and Another* was considered by this court in *United Malayan Banking Corp Berhad v. Ernest Cheong Yong Yin*, whereof it was observed that the relevant section only barred the bringing of a fresh action on the judgment. It follows that the word 'action' in ss. 2(1) and 6(3) of the Limitation Act 1953 means a fresh action and does not include an application to have carriage of a decree of specific performance to completion. (paras 42, 43 & 55)

**(5)** Enclosure 292 was not a fresh action. The appellants were not suing for a decree of specific performance as they already had a decree. By filing the enclosure, the appellants were in effect carrying that decree to completion. It ought to be noted that once specific performance has been decreed, no question of filing a fresh action arises. The appellants were merely carrying that decree to completion, and the order of the Court of Appeal dated 25 October 2005 gave them liberty to pursue the carriage of the order. (paras 37 & 56)

**(6)** The facts in *Daud v. Ibrahim* were distinguishable. In the instant case, the Court of Appeal had made an incidental order on 25 October 2005 in respect of the carriage of the specific performance decree. The appellants made their application pursuant to the incidental order and as such the issue in the instant case concerned with the court's continued supervisory control over the specific performance decree in its equitable jurisdiction. It ought also to be noted that whilst *Johnson and Another v. Agnew* was not dealing with the issue of limitation, unlike the instant case, the fact remains that a principle of law had therein been enunciated that once specific performance is granted, the contract remains in force and is not merged in the judgment. In other words, the court still controls the working out, variation or cancellation of the order pursuant to equitable principles. (paras 51, 52 & 54)

**(7)** On the facts, s. 6(3) of the Limitation Act 1953 was not applicable. In any event, the appellants' application was filed within the limitation period. Enclosure 292 was filed on 7 October 2015 and filed pursuant to the incidental order given by the Court of Appeal on 25 October 2005. It was therefore filed within 12 years from the date of the order of the Court of Appeal. (para 57)

***Bahasa Malaysia** Headnotes*

Perayu-perayu membeli dua bidang tanah pada tahun 1973 ('lot 512 dan 513'), tetapi atas alasan tertentu tidak mendaftarkan diri mereka sebagai pemilik tanah. Pada tahun 1986, perayu-perayu memulakan saman pemula memohon perisytiharan bahawa penjual ('TAT') adalah pemegang amanah mereka dan untuk pelaksanaan spesifik perjanjian jual beli berkaitan. Melalui perintah bertarikh 25 Mac 2000, Mahkamah Tinggi membenarkan pelaksanaan spesifik kontrak ('perintah tahun 2000'). TAT merayu tetapi rayuannya ditolak. Fakta bagaimanapun menunjukkan bahawa, setelah menolak rayuan, Mahkamah Rayuan, melalui perintah bertarikh 25 Oktober 2005, membuat satu perintah sampingan membenarkan perayu-perayu memohon ke Mahkamah Tinggi untuk 'perintah-perintah tambahan berkenaan pelaksanaan spesifik'. Walau apapun, selepas kematian TAT pada tahun 2011, responden menjadi wakil di sisi undang-undang kepada pesaka TAT. Sementara itu, pada 13 Mac 2014, lot 512, yang digadai oleh TAT kepada RHB Bank, dilelong oleh pihak terkemudian, dan berikutnya, perayu-perayu mengkaveat lot 513. Responden membantah tetapi bantahannya tidak mengakibatkan apa-apa. Kemudian, pada 7 Oktober 2015, perayu-perayu memfailkan lampiran 292 di sini, antara, lain bagi memohon perintah supaya responden memindah milik lot 513 kepada mereka. Permohonan dibenarkan oleh Mahkamah Tinggi. Menurut yang arif Pesuruhjaya Kehakiman ('PK'), beliau mempunyai kuasa sedia ada untuk membenarkan perintah-perintah yang dipohon serta memerintahkan relief yang berbeza dari perintah tahun 2000, dan lagi, fakta bahawa perintah tahun 2000 membenarkan pelaksanaan spesifik bermakna responden adalah seorang pemegang amanah kepada tanah, yang sekali gus menarik pemakaian s. 22(1) Akta Had Masa 1953 ('Akta Had Masa') dan menyelamatkan permohonan perayu-perayu dari sekatan had masa. Di rayuan, Mahkamah Rayuan, melalui keputusan bertarikh 11 Oktober 2016, bagaimanapun mengganggu dapatan PK. Diputuskan bahawa perintah tahun 2000 hanya membenarkan pelaksanaan spesifik tetapi bukan permohonan mengisytiharkan TAT sebagai pemegang amanah, bahawa PK khilaf dalam memakai bidang kuasa sedia ada mahkamah untuk membenarkan relief yang berbeza dari terma perintah tahun 2000, dan bahawa, berdasarkan autoriti *Daud v. Ibrahim* dan *Seema Development Sdn Bhd v. Mah Kim Chye*, lampiran 292 adalah suatu 'tindakan' dan 'suatu prosiding di mahkamah undang-undang', dan dengan itu dihalang oleh had masa di bawah s. 6(3) Akta Had Masa.

Perayu memohon kebenaran untuk merayu ke Mahkamah Persekutuan sambil menghujahkan bahawa keputusan Mahkamah Rayuan bertarikh 11 Oktober 2016 adalah bertentangan dengan undang-undang mantap. Perayu-perayu menghujahkan bahawa apa yang mereka lakukan hanyalah untuk menyempurnakan dekri pelaksanaan spesifik, di mana kebebasan untuk berbuat demikian diberikan oleh perintah Mahkamah Rayuan bertarikh 25 Oktober 2005. Dihujahkan lagi bahawa Akta Had Masa tidak terpakai, kerana kontrak masih berkuat kuasa dan tidak bertaut dengan dekri.

A Mahkamah Persekutuan memutuskan untuk mendengar rayuan dan sekali gus membenarkan soalan-soalan berikut dihujah di hadapannya, iaitu: (i) sama ada, mengambil kira *Johnson and Another v. Agnew*, had masa terpakai bagi menghalang permohonan untuk menyempurnakan dekri pelaksanaan spesifik; (ii) sama ada, mengambil kira *Lowsley and Another*
B *v. Forbes* dan *United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin*, suatu permohonan untuk menyempurnakan dekri pelaksanaan spesifik merupakan suatu tindakan atas penghakiman dalam maksud s. 6(3) Akta Had Masa; dan (iii) sama ada keputusan dalam *Daud v. Ibrahim* terpakai kepada permohonan untuk menyempurnakan suatu dekri pelaksanaan spesifik.

C **Diputuskan (membenarkan rayuan; mengetepikan perintah Mahkamah Rayuan; mengekalkan perintah Mahkamah Tinggi tetapi atas alasan-alasan yang berbeza)**
**Oleh Hasan Lah HMP menyampaikan penghakiman mahkamah:**

D **(1)** Ini adalah satu kes yang sesuai bagi mahkamah melaksanakan kuasa sedia adanya untuk memerintahkan supaya lot 513 dipindah milik kepada perayu-perayu.

**(2)** Mahkamah-mahkamah di bawah gagal mengambil kira perintah sampingan yang dibuat oleh Mahkamah Rayuan pada 25 Oktober 2005
E yang memberi kebebasan kepada perayu untuk membuat permohonan untuk perintah-perintah tambahan berkaitan dengan perintah pelaksanaan spesifik. Berdasarkan perintah sampingan ini, mahkamah diberi kuasa yang luas untuk memberi apa jua relief yang selaras dengan prinsip-prinsip ekuiti.

F **(3)** Undang-undang adalah jelas bahawa apabila suatu perintah pelaksanaan spesifik dibuat, kontrak berkaitan masih terus berkuat kuasa dan tidak bertaut dengan penghakiman untuk pelaksanaan spesifik, dan sebuah mahkamah ekuiti atau sebuah mahkamah yang melaksanakan bidang kuasa ekuiti, masih mengawal hal perkara tersebut sepenuhnya.

G **(4)** Di dalam *Lowsley and Another v. Forbes*, perkataan 'tindakan' diputuskan sebagai bermaksud suatu tindakan baharu tetapi tidak termasuk prosiding melalui penguatkuasaan. *Lowsley and Another* telah dipertimbang oleh mahkamah ini dalam *United Malayan Banking Corp Berhad v. Ernest Cheong Yong Yin*, di mana pemerhatian dibuat bahawa
H seksyen berkenaan hanya melarang pembawaan satu tindakan baharu atas penghakiman. Ianya mengikut bahawa perkataan 'tindakan' di dalam ss. 2(1) dan 6(3) Akta Had Masa 1953 bermaksud satu tindakan baharu dan tidak merangkumi permohonan untuk melaksanakan dekri pelaksanaan spesifik sehingga sempurna.

I **(5)** Lampiran 292 bukan satu tindakan baharu. Perayu-perayu tidak menuntut dekri pelaksanaan spesifik kerana mereka sudah pun memperolehnya. Dengan memfail lampiran, perayu-perayu sebenarnya hanya menyempurnakan dekri tersebut. Harus diingat bahawa sebaik dekri pelaksanaan spesifik dibuat, soal memfail tindakan baharu tidak

lagi berbangkit. Perayu-perayu hanya menyempurnakan dekri dan perintah Mahkamah Rayuan bertarikh 25 Oktober 2005 memberikan mereka kebebasan untuk berbuat demikian.

**(6)** Fakta-fakta dalam *Daud v. Ibrahim* boleh dibezakan. Dalam kes semasa, Mahkamah Rayuan telah membuat perintah sampingan pada 25 Oktober 2005 berhubung penyempurnaan dekri pelaksanaan spesifik. Perayu-perayu membuat permohonan mereka berdasarkan perintah sampingan tersebut dan oleh itu isu yang berbangkit di sini adalah mengenai kesinambungan penyeliaan dan kawalan mahkamah ke atas dekri pelaksanaan spesifik dalam bidang kuasa ekuitinya. Harus juga diingat bahawa walaupun *Johnson and Another v. Agnew* tidak menangani isu had masa seperti kes di sini, faktanya masih lagi bahawa suatu prinsip telah diisytiharkan di situ bahawa semasa perintah pelaksanaan spesifik dibenarkan, kontrak masih berkuat kuasa dan tidak menjadi sebahagian penghakiman. Dalam erti kata lain, mahkamah masih mengawali pemberian, pengubahan atau pembatalan perintah berdasarkan prinsip-prinsip ekuiti.

**(7)** Atas fakta, s. 6(3) Akta Had Masa 1953 tidak terpakai. Walau bagaimanapun, permohonan perayu-perayu telah difail dalam tempoh had masa. Lampiran 292 telah difail pada 7 Oktober 2015 dan difail berdasarkan satu perintah sampingan Mahkamah Rayuan bertarikh 25 Oktober 2005. Maka ia difailkan dalam tempoh 12 tahun dari tarikh perintah Mahkamah Rayuan.

**Case(s) referred to:**

*Daud v. Ibrahim [1960] 1 LNS 22 HC* ***(dist)***
*Husainsab Goususab (Kareemsab) v. Krishnarao Shehagiriroa 2002 (5) KarLJ 137* ***(refd)***
*Jai Narain Ram Lundia v. Kedar Nath Khetan And Ors 1956 AIR 359* ***(refd)***
*Johnson and Another v. Agnew [1979] 1 All ER 883* ***(refd)***
*Lowsley And Another v. Forbes (t/a LE Design Services) [1998] 3 All ER 897* ***(refd)***
*Ridgeway Motors (Isleworth) Ltd v. ALTS Ltd [2005] 2 All ER 304* ***(refd)***
*Seema Development Sdn Bhd v. Mah Kim Chye [2014] 1 CLJ 804 HC* ***(refd)***
*Sekemas Sdn Bhd v. Lian Seng Co Sdn Bhd [1989] 2 CLJ 142; [1989] 1 CLJ (Rep) 154 SC* ***(refd)***
*United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin [2002] 2 CLJ 413 FC* ***(refd)***
*WT Lamb & Sons v Rider Same v. Same [1948] 2 All ER 402* ***(refd)***
*Yarwinder Gill v. Siu-May Tsang, Pamigold Limited [2003] WL 21554631* ***(refd)***

**Legislation referred to:**

Limitation Act 1953, ss. 2(1), 6(3), (6), 22(1)
Rules of Court 2012, O. 92 r. 4

Limitation Act 1934 [UK], s. 2(4)
Limitation Act 1939 [UK], s. 2(4)
Limitation Act 1980 [UK], ss. 24(1), 36(1)(f), 38(1)
The Constitution of India 1949 [Ind], art. 136

*For the appellants - Gopal Sri Ram, Sri Dev Nair & David Yii; M/s Sri Dev and Naila*
*For the 16th appellant - R Kandiah; M/s Mohd Latip & Assocs*
*For the respondent - Danny Yap Sin Leng & Kelly Wong Kai Yi; M/s Shyong Wee & Danny*

*[Editor's note: For the Court of Appeal judgment, please see Tan Pok Shyong As Legal Representative Of The Estate Of Tan Ah Tong (By Order Dated 26/02/2013) v. Gan Boon Kee & Ors [2017] 1 LNS 270 (overruled); For the High Court judgment, please see [2016] 1 LNS 1620 (affirmed).]*

*Reported by Wan Sharif Ahmad*

## JUDGMENT

**Hasan Lah FCJ:**

**Introduction**

**[1]** This appeal arose from the decision of the Court of Appeal given on 11 October 2016 wherein the appeal by the respondent was allowed with costs.

**[2]** On 5 April 2017, leave to appeal was granted to the appellants on the following questions of law:

(i) Whether limitation applies to bar an application to have carriage of a decree of specific performance having regard to the decision of the House of Lords in *Johnson and Another v. Agnew* [1979] 1 All ER 883.

(ii) Whether an application to have carriage of a decree of specific performance to completion is an action upon a judgment within s. 6(3) of the Limitation Act 1953 having regard to the decision in *Lowsley and Another v. Forbes (t/a LE Design Services)* [1998] 3 All ER 897 as applied in *United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin* [2002] 2 CLJ 413; [2002] 2 MLJ 385.

(iii) Whether the decision in *Daud v. Ibrahim* [1960] 1 LNS 22; [1961] MLJ 43 applies to an application to have carriage of a decree of specific performance to completion having regard to the decision in *Johnson And Another v. Agnew* [1979] 1 All ER 883.

**[3]** The appellants were the plaintiffs in the High Court and the respondent was the first defendant. There were altogether 29 plaintiffs in the High Court.

**Background Facts**

**[4]** The relevant background facts as laid down by the Court of Appeal are these. The appellants sometime in 1973 entered into sale and purchase agreements with Tan Ah Tong in respect of two pieces of land, namely, lots 512 and 513 in Ulu Kelang. The purchase price was paid in full by the appellants.

**[5]** The two pieces of land were then charged to Chase Manhattan Bank on 11 February 1974 by Tan Ah Tong.

**[6]** In May 1986, the appellants took out a legal action in originating summons no. F31-90-86 and sought for two reliefs, namely, a declaration that Tan Ah Tong is a trustee of the said lands for the appellants and specific performance of the sale and purchase agreements between the appellants and Tan Ah Tong.

**[7]** On 25 March 2000, after a full trial of the aforesaid suit, the High Court granted the following order ('2000 order'):

> that there be specific performance of the contracts for the plaintiffs except 29th plaintiff against the 1st, 2nd and 3rd Defendants.

**[8]** On 27 July 2000, Tan Ah Tong charged lot 512 again to RHB Bank Berhad (previously known as Bank Utama).

**[9]** Dissatisfied with the 2000 order, Tan Ah Tong appealed to the Court of Appeal. On 25 October 2005, the Court of Appeal dismissed his appeal. Leave to appeal against that decision was refused by this court on 5 July 2006.

**[10]** Tan Ah Tong died on 7 April 2011 which resulted in his son Tan Pok Shyong being substituted as the legal representative of the estate of Tan Ah Tong.

**[11]** Meanwhile, lot 512 was auctioned off by RHB Bank at Gombak Land Office on 13 March 2014.

**[12]** The appellants caveated lot 513 to protect their interest.

**[13]** The respondent, as the legal representative of the estate of Tan Ah Tong, objected to the land office of the entry of the caveat on lot 513 by the appellants.

**[14]** On 7 October 2015, the appellants then filed the application (encl. 292) which is the subject matter of the appeal before this court for an order, *inter alia*, that the respondent transfer lot 513 to the appellants. The application was amended by an order of the court dated 10 March 2016.

**[15]** On 10 March 2016, the High Court granted orders in term of the application. It was also ordered that the appellants are to hold the estate of Tan Ah Tong's undivided share in lot 513 on trust for the estate.

**Decision Of The High Court**

**[16]** On the issue of whether the High Court was seized with the jurisdiction to grant the orders prayed for in the application, the learned Judicial Commissioner (as he then was) held that the High Court has inherent power to grant such orders so as to prevent injustice pursuant to O. 92 r. 4 of the Rules of Court 2012.

**[17]** The learned Judicial Commissioner held that due to the fact that the sale and purchase agreements were no longer capable of being specifically enforced in accordance with their terms as a result of the foreclosure proceedings in respect of lot 512, it would be open to the High Court to order that lot 513 be instead transferred to the appellants pursuant to the inherent jurisdiction of the High Court.

**[18]** Based on the circumstances of the case, the learned Judicial Commissioner ruled that it was appropriate to exercise the inherent power of the court to order relief that differs from the 2000 order.

**[19]** As regards the issue of limitation, the learned Judicial Commissioner opined that the fact that specific performance was granted in the 2000 order meant that the respondent was by necessary implication a trustee of the land for the benefit of the appellants. As such s. 22(1) of the Limitation Act 1953 applies and the appellants were not barred by limitation.

**Decision Of The Court Of Appeal**

**[20]** The Court of Appeal agreed with the learned Judicial Commissioner's view that the reliefs sought for by the appellants were inconsistent with the terms of the 2000 order. However, the Court of Appeal disagreed with the learned Judicial Commissioner's view that he could invoke the court's inherent jurisdiction to overcome the inconsistency to grant the reliefs to the appellants.

**[21]** The Court of Appeal held that in the 2000 order, the High Court only granted an order of "specific performance" but did not allow the prayer for a declaration that Tan Ah Tong was a trustee.

**[22]** The application made by the appellants was an "action" as defined in s. 2(1) of the Limitation Act 1953. It was therefore a "proceeding in a court of law" and the appellants' application was barred by limitation pursuant to s. 6(3) of the Limitation Act 1953. The Court of Appeal relied on the decision in *Daud v. Ibrahim* [1960] 1 LNS 22; [1961] 1 MLJ 43 and *Seema Development Sdn Bhd v. Mah Kim Chye* [2014] 1 CLJ 804; [2014] 2 MLJ 425 as the basis of its decision.

**Submissions Of The Appellants**

**[23]** Learned counsel for the appellants submitted that the Court of Appeal failed to appreciate that there was no necessity for the appellants to file a fresh action to recover the property as the Court of Appeal (in regards to the appeal by the respondent against the 2000 order) had on 25 October 2005 made the following incidental or ancillary order:

> DAN DIPERINTAHKAN bahawa Responden-Responden dibenarkan membuat permohonan kepada Mahkamah Tinggi untuk Perintah-Perintah tambahan berkenaan dengan Pelaksanaan Spesifik.

**[24]** It was contended that the decision of the Court of Appeal was contrary to settled law. This was a case where the appellants were merely carrying the decree of specific performance to completion, and the order of the Court of Appeal dated 25 October 2005 gave the appellants liberty to pursue the carriage of the order. As such, the Limitation Act 1953 does not apply to the facts of this case because the contract remains in force and does not merge into the decree and a court of equity maintains full control and supervision over its decrees. In support of that proposition, learned counsel cited the case of *Johnson And Another v. Agnew (supra)*.

**[25]** It was also submitted that once specific performance has been decreed no question of filing a fresh action arises. The Limitation Act 1953 has no application to the enforcement of the specific performance decree because the court exercises equitable jurisdiction over the carriage of the order. The following cases were cited for the proposition:

(a) *Yarwinder Gill v. Siu-May Tsang, Pamigold Limited* [2003] WL 21554631;

(b) *United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin* [2002] 2 CLJ 413; [2002] 2 MLJ 385;

(c) *WT Lamb & Sons v. Rider Same v. Same* [1948] 2 All ER 402;

(d) *Ridgeway Motors (Isleworth) Ltd v. ALTS Ltd* [2005] 2 All ER 304; and

(e) *Lowsley And Another v. Forbes (t/a LE Design Services)* [1988] 3 All ER 897.

**[26]** It was therefore submitted that the three questions of law posed in this appeal must be answered in the negative.

**Submissions Of The Respondent**

**[27]** With regard to the first question of law posed in this appeal, learned counsel for the respondent submitted that on the facts of *Johnson And Another v. Agnew* the decision was not applicable to the instant case. It was contended that what was held in *Johnson And Another v. Agnew* was that if a vendor obtained an order for specific performance and it became impossible to enforce it, he then had the right to ask the court to discharge the order and terminate the contract. The court may then award damages at common law for breach of contract since the contract was not rescinded *ab initio* but remained in existence until it was terminated by the court.

**[28]** It was also contended that *Johnson And Another v. Agnew* did not deal with the issue of limitation. In the instant case, the limitation for enforcement of the said order as stipulated under s. 6(3) of the Limitation Act 1953 applies. Furthermore, the appellants failed to give any explanation on the delay in taking action to execute the 2000 order. The 2000 order became impossible to be performed due to the appellants' own laches.

**[29]** With regard to the second question of law posed in this appeal, learned counsel for the respondent submitted that on the facts of this case, the provision of sub-ss. (3) and (6) of s. 6 of the Limitation Act 1953 are applicable to the appellants' application in encl. 292. It was argued that the Malaysian provisions are different from s. 36(1)(f) of the English Limitation Act 1980 which expressly excludes limitation period for the enforcement of judgment for a claim of specific performance.

**[30]** Learned counsel referred to the Indian High Court case of *Husainsab Goususab (Kareemsab) v. Krishnarao Shehagiriroa* 2002 (5) KarLJ 137 which dealt with art. 136 of the Constitution of India 1949 which provides a limitation period of 12 years "for the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court". It was held in that case that execution of a decree of specific performance would be caught by art. 136.

**[31]** It was also submitted that the limitation under s. 6(3) of the Limitation Act 1953 would still apply to the appellants' application even if they were not undertaking a fresh action and were merely executing the 2000 order. In any event, it was submitted that encl. 292 was in effect the appellants' attempt to bring a fresh action disguised as carriage of a decree of specific performance to completion.

**[32]** Learned counsel for the respondent contended that encl. 292 attempted to bypass the various conditions that are to be specifically performed under the 2000 order. It was therefore necessary for the appellants to satisfy their obligations under the sale and purchase agreements such as the conditions under cls. 7 and 8 of the agreement before they could be registered as the proprietors of the land.

**[33]** It was also submitted that an executing court could not go beyond the directions of the 2000 order to vary the same. In support of that proposition, learned counsel for the respondent cited the decision of the Indian Supreme Court in *Jai Narain Ram Lundia v. Kedar Nath Khetan And Ors* 1956 AIR 359.

**[34]** With regard to the third question of law posed in this appeal, it was submitted that the facts in *Daud v. Ibrahim* are very similar to the facts of the present case.

**Decision Of This Court**

**[35]** Subsections (3) and (6) of s. 6 of the Limitation Act 1953 read as follows:

> (3) An action upon any judgment shall not be brought after the expiration of twelve years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.
>
> ...

(6) Subject to sections 22 and 32 of this Act the provisions of this section shall apply (if necessary by analogy) to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity.

**[36]** The main issue in this appeal is whether the Court of Appeal is right to hold that the appellants' application in encl. 292 dated 7 October 2015 was barred by limitation by virtue of s. 6(3) of the Limitation Act 1953. Among the reasons given by the Court of Appeal are as follows:

19. We must not forget that the 2000 High Court order as it stood then and now stands is a Judgment which is subject to the provisions of Limitation Act 1953. Of relevance to this case is section 12 (sic) which reads as follows:

> An action upon any judgment shall not be brought after the expiration of twelve years from the date on which the judgment became enforceable and no arrears of interests in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due

20. In our view, there was little doubt that the application made by the Respondents was an "action" as defined in section 2(1) of the Limitation Act which states that "action" includes "a suit or any other proceeding in a Court of law". The notice of application in this case was a "proceeding in a Court of law".

...

[23] We see no reason to depart from what was said in the just quoted cases. There is no exception to the 12 years limitation period provided by law. We must not lose sight of the fact that when a successful litigant obtains a judgment, that judgment is clothed with rights and obligations. The successful litigant has the rights to execute on that judgment but he or she is obliged to execute those rights within the 12 years limitation period provided by law. Failure to do so will have the consequence of rendering that judgment nugatory and unfortunately for the respondents here, they have forgone their acquired rights.

...

25. This was simply a case where the Respondents had acquired a Judgment which they had sat on it for more than 12 years and in an attempt to circumvent the limitation period of 12 years made this application to amend or vary the order of "specific performance" to an order of "declaration that the Appellant is a trustee of Lot 513". These two orders are different in nature and when the trial Judge refused the prayer of declaration of trusteeship and granted an order of specific performance in 2000, it could not be changed in the circumstances of this case.

**[37]** The Court of Appeal failed to consider the effect of the incidental or ancillary order made by the Court of Appeal on 25 October 2005 to the 2000 order where the appellants were given liberty to make application for additional orders in respect of the order for specific performance. By filing the application in encl. 292, the appellants were in effect carrying that decree to completion. As such, it is not correct to say that by filing encl. 292, the appellants were filing a fresh action. Furthermore, once specific performance has been decreed no question of filing a fresh action arises.

**[38]** The law is clear that when an order for specific performance is made, the contract remains in effect and is not merged in the judgment for specific performance, and a court of equity or one exercising equity jurisdiction, maintains full control of the matter. This proposition of law was accepted by the House of Lords in *Johnson And Another v. Agnew* as follows:

> Fourthly, if an order for specific performance is sought and is made, the contract remains in effect and is not merged in the judgment for specific performance. This is clear law, best illustrated by the judgment of Greene MR in *Austins of East Ham Ltd v. Macey* in a passage which deals both with this point and with that next following. It repays quotations in full:
>
> > The contract is still there. Until it is got rid of, it remains as a blot on the title, and the position of the vendor, where the purchaser has made default, is that he is entitled, not to annul the contract by the aid of the court, but to obtain the normal remedy of a party to a contract which the other party has repudiated. He cannot, in the circumstances, treat it as repudiated except by order of the court and the effect of obtaining such an order is that the contract, which until then existed, is brought to an end. The real position, in my judgment, is that, so far from proceeding to the enforcement of an order for specific performance, the vendor, in such circumstances is choosing a remedy which is alternative to the remedy of proceeding under the order for specific performance. He could attempt to enforce that order and could levy an execution which might prove completely fruitless. Instead of doing that, he elects to ask the court to put an end to the contract, and that is an alternative to an order for enforcing specific performance.
>
> Fifthly, if the order for specific performance is not complied with by the purchaser, the vendor may either apply to the court for enforcement of the order, or may apply to the court to dissolve the order and ask the court to put an end to the contract. This proposition is as stated in Austins of *East Ham Ltd. v. Macey* (and see *Sudagar Singh v. Nazeer* per Megarry V.C.) and is in my opinion undoubted law, both on principle and authority. It follows, indeed, automatically from the facts that the contract remains in force after the order for specific performance and that the purchaser has committed a breach of it of a repudiatory character which he has not remedied, or as Megarry V. C. puts it that he is refusing to complete.

**[39]** The word "action" is defined in s. 2(1) of the Limitation Act 1953 to include "a suit or any other proceeding in a court of law". In *WT Lamb & Sons v. Rider, Same v. Same*, the English Court of Appeal had this to say on the meaning of the word "action" as defined in s. 2(4) of the Limitation Act 1939:

> Limitation Act, 1939, is wide, but we are unable to see how this fact gets the plaintiffs within measurable distance of the conclusion which they seek to found on it. The reason for including "any proceeding in a court of law" in the meaning of the word "action" is sufficiently apparent when one sees that many of the actions dealt with by the Act (e.g., foreclosure and redemption actions) are normally commenced by originating summons and not by writ. No more weight can be attached to this definition that could have been attached to s. 40 of the Act of 1833 in which the words "action or suit or other proceeding" were prefatory to a number of different kinds of proceedings, some at common law, some in equity, and would require, accordingly, to be read distributively. The language of s. 2(4) of the Act of 1939 in itself is plain and re-enacted existing law. To resort to the definition section, not otherwise required, in order to show that the legislature were intending to blend together matters respectively of substantive law and of procedure which had never been blended before is to adopt what is to our mind, a bold but illegitimate course. The relevant provisions of the Real Property Limitation Acts, 1833 and 1874, and of the Limitation Act, 1939, dealt, in our opinion, with the substantive right to sue for and obtain a judgment, and with that alone. The Common Law Procedure Act 1852, and R.S.C., Ord. 42, were concerned, and concerned alone, with procedural machinery for enforcing a judgment when obtained. The two subjects were formerly quite independent and distinct, the one from the other, and we are quite unable to attribute to the definition of "action" in the Limitation Act, 1939, the effect of merging the two together. We are satisfied that the plaintiffs attack on the validity of R.S.C., Ord. 42, r. 23(a), is without foundation, and, accordingly, that he has no right to proceed to execution except with the leave of the court under that rule. As to the necessity for such leave, counsel for the plaintiffs further argued that even after the expiration of six years a plaintiff is entitled to execution as of right unless a change has taken place by death or otherwise in the parties entitled or liable to execution. In our judgment, however, the issue of execution is within the discretion of the court after six years have elapsed, even where no such change has occurred.

**[40]** In *Ridgeway Motors (Isleworth) Ltd* v. *ALTS (supra)*, a judgment for costs was obtained against the appellant company and it became enforceable in January 1998. The judgment debt remained unpaid and in February 2004 the respondent company as judgment creditor presented a winding up petition against it. The appellant applied to strike out the petition, contending: (i) that it fell within the definition of 'action' in s. 38(1) of the Limitation Act 1980, which included 'any proceeding in a court of law'; and (ii) that as the action was brought upon the costs judgment it was statute-barred under s. 24(1) of the 1980 Act, which provided that 'an action shall not be brought on any

judgment' after the expiration of six years from the date on which the judgment became enforceable. The judge dismissed the application and the appellant appealed.

**[41]** The Court of Appeal through Mummery LJ, made the following observation on the word "action" as defined in s. 2(4) the Limitation Act 1934:

> [10] The expression '[a]n action ... upon any judgment' in s. 2(4) of the 1939 Act was interpreted by the Court of Appeal in *WT Lamb & Sons v. Rider* (1948) 2 All ER 402, [1948] 2 KB 331 as applying only to suing for a judgment upon a judgment. It did not apply to execution of a judgment. The Court of Appeal rejected the contention that the provision in the RSC (Ord 42, r. 23(a)) which required a judgment creditor, after the elapse of six years from the date of the judgment, to obtain the leave of the court to levy execution, was rendered invalid by s. 2(4) of the 1939 Act, which allowed 12 years for bringing an action upon any judgment as of right.
>
> ...
>
> [14] In the light of the conclusions reached by the court on its historical survey the *Lamb* case is authority for the proposition that the limitation period set by s. 2(4) only applied to an action brought by a judgment creditor suing upon his existing judgment for another judgment. For limitation purposes an action brought upon a judgment to obtain another substantive judgment was distinct from the procedural steps taken to execute an existing judgment.

**[42]** In *Lowsley and Another v. Forbes (t/a LE Design Services (supra)* one of the issues which had to be decided by the House of Lords was whether the word "action" which was defined by s. 38(1) of the Limitation Act 1980 as including "any proceeding in a court of law" bars execution of a judgment after six years, or whether it only bars the bringing of a fresh action on the judgment. At p. 906 of the report, Lord Lloyd of Berwick held:

> For all these reasons I would hold that the first question must be answered in favour of the plaintiffs. 'Action' in s. 24(1) means a fresh action, and does not include proceedings by way of execution. It is unfortunate that the decisive point in the case did not emerge until the very end of the hearing. But having considered the point in the light of Mr Hockman's written submissions, I am not left in any doubt as to the correct answer. I would therefore uphold the Court of Appeal on the first point, *albeit* for different reasons.

**[43]** The case of *Lowsley And Another v. Forbes (t/a LE Design Services)* was considered by this court in *United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin (supra)* where the following observation was made:

> Of course both the *Lim Ah Hee*'s case and the *Malaysian Soil Investigation*'s case were heard in the High Court before *Lowsley & Anor v. Forbes (t/a LE Design Services)* [1998] 3 All ER 897 was decided. To say that *Lowsley*'s case overruled *Lamb*'s case is also not right as the headnote merely states that *Lamb*'s case was considered. As for the word 'action', the House of Lords

held that on a true construction of that word in the relevant law, it must mean a fresh action and did not include proceedings by way of execution. Accordingly, the section did not bar execution of a judgment after six years but only barred the bringing of a fresh action on the judgment.

**[44]** The Court of Appeal, *inter alia*, relied on the decision in *Daud v. Ibrahim (supra)* to hold that the appellants' application under encl. 292 was barred by the limitation of 12 years under s. 6(3) of the Limitation Act 1953.

**[45]** In that case, the plaintiff bought a piece of land from the first defendant and paid for it. The first defendant sold it to the second defendant and the second defendant knew that the land had already been bought by the plaintiff. The Magistrate ordered the second defendant to transfer the land to the plaintiff.

**[46]** The second defendant appealed to the second division of the High Court and his appeal was dismissed. He then appealed to the first division of the High Court and this appeal was also dismissed.

**[47]** The second defendant however took no steps to transfer the land to the plaintiff. The order of the Magistrate contained no provision for compelling the second defendant to transfer the land or for enabling it to be transferred if the second defendant refused or neglect to transfer it.

**[48]** The plaintiff took no steps to execute his judgment until 5 January 1959, when he made an application to the Alor Setar Magistrate for an order calling upon the second defendant to show cause why he should not be compelled to execute a transfer of the land in the plaintiff's favour. This application was dismissed by the Magistrate on 13 January 1959 on the ground that it was statute-barred.

**[49]** The plaintiff did not appeal from the Magistrate's decision but, instead, took the course of making an application to the High Court by summons-in-chambers dated 11 February 1959 for an order varying the order of the first division of the High Court dated 17 February 1940. The learned judge to whom the application was made took the view that this was a case for the exercise of the inherent power of the court to vary its own order so as to carry out its meaning or to make its meaning plain. The learned judge allowed the plaintiff's application. The second defendant appealed against that decision to the then Court of Appeal.

**[50]** The then Court of Appeal allowed the second defendant's appeal. Good JA who delivered the judgment of the court, *inter alia* held:

The respondent elected, instead of appealing, to circumvent the decision of the Magistrate in 1959 by starting proceedings *de novo* in the High Court; but here, says the appellant, he was statute-barred. It is true, as the learned Judge has correctly pointed out, that where the question is one of exercising the inherent discretion to vary an order to effect or explain

A its intention, "lapse of time has nothing to do with the question": *Hatton v. Harris (2)*. But the purpose of the proceedings commenced by the summons-in-chambers here was to obtain execution of a judgment. Such proceedings must, under the Kedah Limitation Enactment (No. 60) which was repealed on the 18th February, 1953, be brought within twelve Muslim years from the date of the judgment, and, under the Limitation
B Ordinance, 1953, which came into force on the 19th February, 1953, within 12 Gregorian years from the date on which the judgment became enforceable.

**[51]** Having carefully considered the judgment in *Daud v. Ibrahim (supra)*, we are of the view that the facts in that case are distinguishable. In the instant
C case, the Court of Appeal had made incidental order on 25 October 2005 in respect of the carriage of the specific performance decree. As mentioned earlier, the appellants made their application pursuant to that incidental order. As such, the issue in the instant case concerned with the court's continued supervisory control over the specific performance decree in its
D equitable jurisdiction.

**[52]** In this connection, we find the following observation of the English High Court in *Yarwinder Gill v. Siu-May Tsang, Pamigold Limited (supra)* to be useful.

E 33. Specific performance is an equitable remedy. Once granted, the contract remains in force and is not merged in the judgment. But, that said, the equitable nature of the remedy does not stop with the grant of the order. The court controls the working out, variation or cancellation of the order. Equitable principles apply to these processes.

F 34. The principles I have stated were enunciated by Lord Wilberforce in a vendor's action for specific performance in *Johnson v. Agnew* [1980] A.C. 367 at pages 392ff. It is worth setting out two short passages at pages 394 and 399 *verbatim*:

> Fifthly, if the order for specific performance is not complied with by the purchaser, the vendor may either apply to the court for
G enforcement of the order, or may apply to the court to dissolve the order and ask the court to put an end to the contract. This proposition is as stated in *Austins of East Ham Ltd. v. Macey* [1941] Ch.338 (and see *Singh (Sudagar) v. Nazeer* [1979] Ch. 474, 480, per Megariy V-C.) and is in my opinion undoubted law, both on principle and authority. It follows, indeed, automatically from the
H facts that the contract remains in force after the order for specific performance and that the purchaser has committed a breach of it of a repudiatory character which he has not remedied, or as Megarry V-C puts it [1979] Ch. 474, 480, 790, that he is refusing to complete.

I Once the matter has been placed in the hands of a court of equity, or one exercising equity jurisdiction, the subsequent control of the matter will be exercised according to equitable principles. The court would not make an order dissolving the decree of specific

> performance and terminating the contract (with recovery of damages) if to do so would be unjust, in the circumstances then existing, to the other party, in this case to the purchaser. (To this extent, in describing the vendor's right to an order as "*ex debito justitae*" Clauson L.J. may have put the case rather too strongly: *John Barker & Co. Ltd. v. Littman* [1941] Ch. 405, 412.) This is why there was, in the Court of Appeal, rightly, a relevant and substantial argument, repeated in this House, that the non-completion of the contract was due to the default of the vendors: if this had been made good, the court could properly have refused them the relief sought.
>
> 35. Nothing in these passages deprives the court of its equitable jurisdiction to make the order for specific performance work. There is not, as Mr Mark Warwick, counsel for Pamigold, suggested, a stark choice between enforcing or dissolving the order. The court may, in my judgment, make such orders as are just and equitable in the circumstances then existing, to give practical effect to the order it has made. In making its order work in the circumstances then arising, the court is not re-writing or even varying the contract between the parties. It is providing a mechanism to give the claimant what he bargained for, namely the sale or purchases of land. Such relief may be granted in a whole range of circumstances in which a defendant has failed to perform both his original contract and the court's subsequent order. If Mr. Warwick were right, an inappropriate and unnecessary rigidity would be introduced into the equitable remedy of specific performance.

**[53]** The case of *Johnson And Another v. Agnew* was referred to by the Supreme Court in *Sekemas Sdn Bhd v. Lian Seng Co Sdn Bhd* [1989] 2 CLJ 142; [1989] 1 CLJ (Rep) 154; [1989] 2 MLJ 155 at p. 156 (CLJ); p. 157 (MLJ) where it was said:

> In *Johnson & Anor v. Agnew* the House of Lords varied the order of the Court of Appeal holding that if a vendor obtained an order for specific performance and it became impossible to enforce it, he then had the right to ask the court to discharge the order and terminate the contract. On such an application he could be awarded damages at common law for breach of contract since the contract was not rescinded *ab initio* but remained in existence until it was terminated by the court.

**[54]** It is true that *Johnson And Another v. Agnew (supra)* does not deal with the issue of limitation, unlike the instant case. What is important however is the principles of law enumerated in the judgment of the House of Lords in that case which had been aptly summarised in para. 33 of the judgment of the case of *Yarwinder Gill v. Siu-May Tsang, Pamigold Limited (supra)* that once specific performance is granted, the contract remains in force and is not merged in the judgment. The court controls the working out, variation or cancellation of the order pursuant to equitable principles.

**[55]** Based on the decision of the English cases which have been referred to earlier in this judgment, we are of the view that the word 'action' in ss. 2(1) and 6(3) of the Limitation Act 1953 must mean a fresh action and did not include an application to have carriage of a decree of specific performance to completion.

**[56]** Enclosure 292 is not a fresh action. The appellants are not suing for a decree of specific performance as they already had a decree. The appellants are merely carrying that decree to completion and the order of the Court of Appeal dated 25 October 2005 gave them liberty to pursue the carriage of the order.

**[57]** On the facts of this case, we find that s. 6(3) of the Limitation Act 1953 is not applicable. In any event, we find that the appellants' application was filed within the 12 years period. The appellants filed their application pursuant to the incidental order given by the Court of Appeal on 25 October 2005. Enclosure 292 was filed by the appellants on 7 October 2015. It was therefore filed within 12 years from the date of the order of the Court of Appeal.

**[58]** It was contended by learned counsel for the respondent that lot 513 could not be transferred to the appellants as various conditions in the contracts including cls. 7 and 8 were not fulfilled. The learned Judicial Commissioner held that based on the circumstances of the case it was appropriate for him to exercise the inherent power of court to order the transfer of lot 513 to the appellants. The learned Judicial Commissioner gave the following reasons for his decision.

> 8. It is also apparent that specific performance in accordance with the strict terms of the SPAs will no longer be possible, as a result of the act of Tan Ah Tong to charge Lot 512 for a second time, which had resulted in the sale of Lot 512 by way of public auction by the chargee in foreclosure proceedings. The SPAs contemplated that Lots 512 and 513 would be amalgamated and then subdivided, such that some of the subdivided plots would be located partly in each of Lots 512 and 513 (see the layout plan attached to the SPAs in Exhibit SSJ3 of Enclosure 293). As the first defendant is no longer the registered proprietor of Lot 512, it will not be possible for him to perform the obligations of Tan Ah Tong under the SPAs in accordance with their strict terms, even if he were so minded to do so.
>
> 9. As a consequence, I am of the view that this court may grant the order seeking for the transfer of the subject land to applicants, even though the High Court order of 25 March 2000 granted specific performance of the SPAs. Due to the fact that the SPAs are no longer capable of being specifically enforced in accordance with their terms as a result of the foreclosure proceedings in respect of Lot 512, it would be open to this court to order that Lot 513 be instead transferred to the applicants, based on the inherent jurisdiction of the High Court.

> 10. Based on the circumstances of this case, I am also of the view that this is an appropriate situation for the exercise of the inherent power of court to order relief that differs from the prior order granted. The plaintiffs have been out of pocket for over 40 years. Even though they had obtained an order for specific performance, the first defendant and his father before him have not complied with that order for 16 years. Moreover, compliance with that order for specific performance has now become impossible, due to the fact that part of the land on which the development was supposed to have stood has now been sold.

**[59]** With regard to the issues of the inherent jurisdiction of the court, the Court of Appeal had this to say

> 24. Furthermore, if we were to sustain the rationale of the learned Judge, we would in fact be ignoring the law. The Court's inherent jurisdiction is not unfettered. The phrase "in the interest of justice" upon which the inherent jurisdiction of the Court is anchored on must, with respect, be interpreted within the boundary of the law. The learned JC had opined that the circumstances had changed since the date of the 2000 High Court order and hence in "the interest of justice", the Appellant ought to be made a trustee of Lot 513. With respect, there was no explanation as to when that change in circumstances occurred. If it had occurred or about to occur within the 12 year limitation period, the Respondents must explain why no step was taken to execute the 2005 (sic) High Court order. No such explanation was before the Court.

**[60]** As mentioned earlier, the courts below failed to take into account the incidental order made by the Court of Appeal on 25 October 2005 which gave the appellants the liberty to make application for additional orders in respect of the order for specific performance. By virtue of that incidental order, the court is given wide powers to order any form of relief in accordance with the equitable principles as the court controls the working out, variation or cancellation of the order for specific performance (*Yarwinder Gill v. Siu-May Tsang, Pamigold Limited*).

**[61]** On the facts of the case, we agree with the decision of the learned Judicial Commissioner that this is an appropriate case for the court to exercise its inherent power to order lot 513 be transferred to the appellants.

**Conclusion**

**[62]** For the foregoing reasons, we answer the three questions of law posed in this appeal in the negative. We therefore allow the appellants' appeal with costs. The order of the Court of Appeal dated 11 October 2016 is set aside and the order of the High Court dated 10 March 2016 is restored, *albeit* for different reasons.